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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

RHONDA BURNETT, JEROD BREIT, JEREMY KEEL,	)	CASE NO:4:19-cv-00332-SRB
HOLLEE ELLIS, AND FRANCES HARVERY, ON	)	<b>AMENDED</b>
BEHALF OF THEMSELVES	)	<b>NOTICE OF MOTION FOR:</b>
AND ALL OTHERS SIMILARLY SITUATED	)	MOTION FOR
PLAINTIFFS	)	RECONSIDERATION
V.	)	
THE NATIONAL ASSOCIATION OF REALTORS,	)	<b>Hearing Date:</b> To be determined
REALOGY HOLDING CORP., HOMESERVICES OF	)	<b>Time:</b> TBD
AMERICA, INC., BHH AFFILIATES, LLC, HSF	)	<b>Location:</b>
AFFILIATES, LLC, RE/MAX, LLC, AND KELLER	)	
WILLIAMS REALTY, INC.,	)	

**INTRODUCTION**

To the Honorable ,Judge Stephen R. Bouh, National Association (NAR) member Art Gonzalez member number 204501476, brings this pro-se reconsideration motion pursuant to Federal Rules of Civil Procedure 9023. Currently there is a proposed settlement in the case and the case has not been finalized. Member Gonzalez tried to look at the Hon. Judge Stephen R. Bouh's online information for a self-calendaring Court date but could not find one and therefore respectfully is asking for the Court to set a date. Gonzalez will email the Attorneys involved to notify them of the reconsideration motion and once there is a Court date, Gonzalez will provide the proper serving of the reconsideration motion.

The main point of the complaint is as stated in paragraph 3 as follows,

1           3. The cornerstone of Defendants’ conspiracy is NAR’s adoption and implementation of a  
2 rule that requires all seller’s brokers to make a blanket, unilateral and effectively non-negotiable offer  
3 of buyer broker compensation (the “Adversary Commission Rule”) when listing a property on a  
4 Multiple Listing Service (“MLS”). This rule in simple terms mandates that a Listing Agent list the  
5 amount of commission the Listing Agent and the Seller have agreed to pay the Buyer’s Agent for  
6 cooperating and bringing a Buyer to buy Seller’s home.  
7

8           The Plaintiff also mentions that there is a lot of confusion in the Real Estate industry  
9 regarding how commissions work and indeed there is a lot of confusion in the industry regarding the  
10 commission structure. Indeed there is a lot of confusion, even this member myself was confused as to  
11 how the commissions actually work, but having analyzed the commission structure, member now  
12 understands how the structure works. The Plaintiff in the complaint states the following in regards to  
13 the confusion that exists in the industry, Paragraph 45 of the complaint states as follows, “The result  
14 of these agreements and the Adversary Commission Rule is that buyer brokers — who are supposed  
15 to assist their clients in negotiating against the seller — **receive their compensation from the total**  
16 **commission paid by the seller, not from the buyer they represent.** Real estate insiders recognize  
17 that the Adversary Commission Rule leads to a marketplace where there is “**a lot of confusion**  
18 **around how commissions work,**” where even writers for real estate publications “never get[] a very  
19 clear cut answer from the industry or from anyone”. Let’s take a look at what the complaint stated  
20 and analyzed it, “...**buyer brokers-who are supposed to assist their clients in negotiation against**  
21 **the seller---receive their compensation from the total commission paid by the seller, not from**  
22 **the buyer they represent” is also a statement that is not correct.**  
23  
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26           The hope is that by analyzing the commission structure from the beginning the Court will get  
27 a clear cut answer as to how the commission structure works. Let’s analyze who indeed pays for the  
28

1 commission. As stated above by the Plaintiff, the commissions rates can be in the range between 5%  
2 to 6% and indeed this would not be considered price fixing. Let's suppose that the commission rate  
3 is set at 6%. Customarily, the commission is split 50/50 between Buyer's Agent and Seller's Agent.  
4 For the purpose of simplification, let's suppose that a piece of real estate has a fair market value of  
5 \$100,000. At this point we must analyze what this actually means.  
6

7 The majority of Seller's use the services of Real Estate Agents to sell their home. It's estimated that  
8 90% of Sellers in the United States use Real Estate Agents to sell their home. What this means is that  
9 the fair market value of a home takes into consideration the commission cost of the Listing Agent and  
10 the Buyer's Agent. Therefore, when the home has a fair market value of \$100,000, this is an estimate  
11 that considers the fact that commissions are built into the fair market value and the commissions are  
12 between the range of 5% to 6%. Based on a google searched its estimated that 90% of Seller's use a  
13 Real Estate Agent and therefore commissions are priced into the fair market value of a property.  
14

15 In the above example if the commission rate is 6%, the total commission would be 6% of  
16 \$100,000 which would be a total of \$6,000 to be paid in commissions to Seller's and Buyer's Real  
17 Estate Agents. The question is who pays the commission and how does it ultimately work? The  
18 Buyer customarily would obtain a loan for the \$100,000 and the commissions paid would ultimately  
19 be paid from this pool of money that comes from the buyer's bank, in other words the Buyer pays for  
20 the commission through the financing of the loan. There are 2 illustrations to demonstrate this  
21 process and it's as follows;  
22

23 Buyer obtains a loan for \$100,000 or brings cash that is transferred to the Seller and the  
24 Agents via escrow.  
25

#### 26 **EXAMPLE 1, AGENTS EACH RECEIVE A 2.5% COMMISSION**

27 \$100,000 from Buyer's Bank goes to → Escrow, Escrow delivers → \$95,000 to Seller  
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Escrow delivers → \$2,500 to Buyer's Agent

Escrow delivers → \$2,500 to Seller's Agent

**EXAMPLE 2, AGENTS EACH RECEIVE A 3% COMMISSION**

\$100,000 from Buyer's Bank goes to → Escrow, Escrow delivers → \$94,000 to Seller

Escrow delivers → \$3,000 to Buyer's Agent

Escrow delivers → \$3,000 to Seller's Agent

Based on these examples, the original source of the commissions came from the Buyer's Bank and therefore, ultimately the Buyer paid for the commissions as he financed the commissions. In example 1, the commissions as part of the \$100,000 were transferred from Buyer's Bank to escrow. Escrow delivered to Seller a check for \$95,000. Escrow delivered a check for \$2,500 to both Buyer's Agent and Seller's Agent. Therefore, the commissions that were delivered to both Agents actually came from the Buyer's bank in which the Buyer obtained a loan and in reality the Buyer financed the commissions. I myself was also confused about the commission structure. The Buyer's bank disbursed the funds to escrow and escrow disbursed the Seller's funds to the Seller. Escrow also disbursed the commissions directly to the agents. The Buyer ultimately financed the deal and ultimately financed the commissions as he will pay off the commissions through the financing he obtained. As proven, ultimately the Buyer paid for the Commission.

To drive the point home, let's look at an example where the Buyer pays cash for the home. The buyer pays the commission.

Now let's look at an example as based in example 2, if Buyer had cash, he could have simply transferred the commission amount straight to the Agents. To confirm that indeed the Buyer customarily has paid for the commissions we can look to the United States for guidance. In the case UNITED STATES OF AMERICA, Department of Justice, Antitrust Division v. National Association

1 of Realtors, the United States stated in paragraph 21 stated the following, “NAR’S Free-Services  
2 Rule allows brokers to mislead buyers by obscuring the fact that buyers have a stake in what their  
3 buyer brokers are being paid for their services. Buyer broker fees, though nominally paid by the  
4 home’s seller, are ultimately paid out of the funds from the purchase price of the house. If buyers are  
5 told that buyer broker services are “free,” buyers are less likely to think to negotiate a lower buyer  
6 broker commission or to view buyer broker rebate offer as attractive.”..... Why initially this may be  
7 hard to understand for most Agents including myself to understand is that the Agents commissions  
8 are never paid by the Seller. Escrow cuts a check to the Brokers Agent themselves. The Buyer  
9 actually finances the commissions paid if he obtains a loan.  
10

11 Looking at the verdict page 2 question 4 where the answer is yes to conspiracy, the National  
12 Association of Realtors were found guilty for damages to the Plaintiff. Page 2 question 4 reads as  
13 follows, “Do you find that the conspiracy set forth in Question 1 caused the Class Plaintiffs to pay  
14 more for real estate brokerage services when selling their homes than they would have paid absent  
15 the conspiracy?” Based on how the commission model works, the Seller could not have been  
16 damaged as ultimately they were not the ones that paid for the commissions based on how the  
17 commission structure works, as in the current structure the commissions are negotiated by the Seller,  
18 but ultimately paid by the Buyer.  
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21 **ILLUSTRATION OF HOW REAL ESTATE COMMISSIONS WORK BASED ON**  
22 **REPOSESSED (REO) HOMES OR REPOSESSED GOVERNMENT HOMES (HUD)**

23 When a Bank or HUD repossesses a home, they put the property in the market and based on  
24 tradition, they have relied on Real Estate Agents to sell their properties. Let’s take the same example  
25 from above. The property fair market value is \$100,000. The Bank or HUD will list their home on  
26 the Multiple Listing Service with a real estate agent. Typically, HUD has paid up to 5% just to  
27 buyer’s agent as was the case in 2004 in the city of Long Beach California (exhibit 1), (member took  
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a sample from Long Beach CA which is the 4<sup>th</sup> largest city in Southern California to have a sample). From 2020 to 2024 all HUD sales commissions were set at 3% to Buyer's Agent in the County of Los Angeles (exhibit 2). Let's do a break down. Let's do a break down of a 5% commission vs. a 6% commission although banks have also at times paid primarily up to 4% commissions exhibit 3.

#### **5% BREAK DOWN COMMISSION AT A \$100,000 SALES PRICE**

Buyer obtains a loan for \$100,000 or brings cash that part of it is transferred to the Seller and the Agents.

\$100,000 funds from the Buyer go to Seller → Seller receives \$100,000

Seller keeps \$95,000

The Agents in total receive \$5,000

#### **6% BREAK DOWN COMMISSION AT A \$100,000 SALES PRICE**

\$100,000 funds from Buyer go to Seller → Seller receives \$94,000

→ The Agents in total receive \$6,000 through escrow which was paid and financed by the Buyer

Based on the analysis of the 5% to 6% break down, the conclusion is that the Buyer is the one that paid the Agent's commissions.

The question is then why would a Seller pay more? The answer is that at times depending on economic factors such as properties been difficult to sell, it might make sense to pay more as demonstrated by HUD and Banks. HUD and Banks understand this that's why they have offer in Southern California up to 5%, exhibits 1 and 3.

The complaint provided evidence of collusion based on a script in which the Agent was trying to have the Listing Agent pay a 3% commission. The complaint states as follows, Paragraph 96. In an earlier script ("Explaining How Commission Is Used: Script #2"), the Keller Williams guide

1 suggests that a realtor point out that “the homes that are really selling almost always have 3 percent to  
2 the other agent,” in contrast to “these other listings where they’re asking just 2.5 percent for the other  
3 agent.”

4           97. This practice of steering, confirmed by economic literature and by Defendants’ Case 4:  
5 own training materials, has manifest anticompetitive effects. Steering deters reductions from the  
6 “standard” commission and enables brokers to avoid doing business with, or to retaliate against,  
7 buyer brokers who try to compete by offering significant discounts.

8           It may seem that this practice of incentivizing Agents through a higher commission may be a  
9 bad practice, but that’s a practice and precedent that has been set by Banks and HUD as they have  
10 offered up to 5% just to Buyer’s Agent and that’s not including the Listing Agent compensation,  
11 please see exhibits 1 and 3 as HUD and Banks have offered between 4% to 5% just to Buyer’s Agent.  
12 The question is why would HUD and the Banks do such practice? The reason is that they have set  
13 the precedent that it might help them sell a home if the Buyer’s Agent gets paid more. There is  
14 nothing wrong with this practice and even if there was, government has set the precedent, please look  
15 at 2004 as HUD provided a 5% commission to Buyer’s Agent exhibit 1.  
16

17           Therefore, the script should have been as follows, “Mr. and Mrs. Seller, in the past, HUD and  
18 Banks have set a precedent offering up to 5% just to Buyer’s Agent because they understand  
19 incentivizing an Agent is important. The commissions are always negotiable, you can offer anything  
20 you like, however, the reality is if you were to offer to low of a commission of say \$1,000, the service  
21 provided for \$1,000 would not allow us to stay in business. Every industry has a range as to what a  
22 service may cost. The range in Real Estate to stay in business and to provide a good service is  
23 between 5% to 6% and therefore the commission can be 5%, 5.25%, 5.5%, 5.75%, 6%, its your  
24 choice. Ultimately if you follow HUD’s and the banks precedent, you can pay 6% as that is what  
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1 HUD has offered to Buyer's Agent in California from 2020 to 2024, exhibit 3, 3% to Buyer's Agent  
2 commission equals a 6% total commission, 3% to Buyer's Agent and 3% to Seller's Agent.

3 **PROPOSED SETTLEMENT CHANGE, LISTING AGENT IS TO NEGOTIATE HIS**  
4 **COMMISSION ONLY**

5 There are several proposed changes that ultimately will not work because ultimately as the  
6 United States understands, the commissions are paid from the funds that come from the Buyer and  
7 ultimately the Seller doesn't have the commissions to give to his own Agent until he receives those  
8 funds from the Buyer. Let's give an example using the same figures of the example above. Let's  
9 revisit the facts of the case above. Let's supposed that the property is worth \$100,000. As mentioned  
10 the fair market value of a home factors in the commission to the transaction and it's an estimate. So  
11 let's supposed the Seller negotiates a 3% commission with the listing agent, ultimately the Buyer is  
12 paying for this and would need Buyer's and Bank's Consent.

13 **PROPOSED SETTLEMENT CHANGE, BUYER'S AGENT IS TO NEGOTIATE HIS**  
14 **COMMISSION ONLY**

15 This change would work because as demonstrated and the United States understands, the  
16 Buyer has always paid the commissions through the financing. Maybe this explains why the United  
17 State Veteran Governmental program that was created by the government the Buyer is prohibited to  
18 pay for any commissions pursuant to the current rule 8 in the Veterans Pamphlet 26-7, Revised  
19 Chapter 8 which reads as follows, "Fees or commissions charged by a real estate agent or broker in  
20 connection with a VA loan may not be charged to or paid by the veteran-purchaser. While use of  
21 "buyer" brokers is not precluded, veteran-purchasers may not, under any circumstances, be charged a  
22 brokerage fee or commission in connection with services of such individuals. Since information on  
23 property available to the public from a variety of sources, VA does not believe that preventing the  
24 veteran from paying buyer-broker fees will harm the veteran." As proven, the Seller in the past has  
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1 negotiated the commissions up front with the Agent and the Buyer has ultimately paid for the  
2 commissions.

3 **PROPOSED SETTLEMENT CHANGE, COMMISSIONS CANNOT BE DISCLOSED**  
4 **IN THE MLS**

5 Based on HUD and Bank precedent of offering up to 5% just to Buyer's Agent, this would be  
6 a disservice to the Seller because the Seller can use this tool just like HUD and the Banks have used  
7 this tool in the past to their benefit of promoting a listing. When it comes to this topic, HUD and the  
8 Banks have set a precedent and this precedent should not be changed. Furthermore, just like any  
9 other profession, a Real Estate Agent has the right to fair compensation just like an Attorney has the  
10 right to compensation in any state. In looking at California, Attorneys have the right to fair  
11 compensation pursuant to case law Flannery v. Prentice, 28 P. 3d 860 - Cal: Supreme Court 2001.  
12 The Supreme Court in this case stated, "As California courts long have recognized, **section 12965**  
13 **fees are intended to provide "fair compensation to the attorneys involved in the litigation at**  
14 **hand and encourage[] litigation of claims that in the public interest merit litigation."** (Weeks v.  
15 Baker & McKenzie (1998) 63 Cal.App.4th 1128, 1172, 74 Cal.Rptr.2d 510.) As discussed above, our  
16 construing section 12965 to vest ownership of fees awarded thereunder in counsel when, for whatever  
17 reason, no contract exists disposing of them, thus diminishing the risk of noncompensation or  
18 undercompensation, will enhance the likelihood that attorneys who undertake FEHA cases will be  
19 fully compensated, and to that extent will enhance the fee provision's effectiveness in encouraging  
20 counsel to undertake FEHA litigation." If a listing offers compensation that undercompensates a  
21 Real Estate Agent, the Agent has every right to reject showing the listing. This is also  
22 unconstitutional based on the 14<sup>th</sup> Amendment as based on appropriate compensation to stay in  
23 business, if a Real Estate Agent needs to jump through hurdles since the compensation will not be  
24 provided in the Buyer's Agent Compensation field this would be against the Constitution based on  
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1 the 14<sup>th</sup> Amendment which states according to Cummings v. Missouri, 71 US 277 - Supreme Court  
2 1867, “The theory upon which our political institutions rest is, that all men have certain inalienable  
3 rights — that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of  
4 happiness all avocations, all honors, all positions, are alike open to every one, and that in the  
5 protection 322\*322 of these rights all are equal before the law.” In other words an individual can be  
6 justly compensated for his services to stay in business and in the pursuit of happiness. Furthermore,  
7 according to Cotting v. Kansas City Stock Yards Co., 183 US 79 - Supreme Court 1901 stated, “The  
8 question is not how much he makes out of his volume of business, but whether in each particular  
9 transaction the charge is an unreasonable exaction for the services rendered. **He has a right to do**  
10 **business.** He has a right to charge for each separate service that which is **reasonable compensation**  
11 **therefor,** and the legislature may not deny him such reasonable compensation, and **may not interfere**  
12 **simply because out of the multitude of his transactions the amount of his profits is large.** Such  
13 was the rule of the common law even in respect to those engaged in a quasi public service  
14 independent of legislative action. In any action to recover for an excessive charge, prior to all  
15 legislative action, who ever knew of an inquiry as to the amount of the total profits of the party  
16 making the charge? Was not the inquiry always limited to the particular charge, and whether that  
17 charge was an unreasonable exaction for the services rendered? As said by Mr. Justice Bradley, in  
18 Transportation Co. v. Parkersburg, 107 U.S. 691, 699”. In other words, a Real Estate Agent has  
19 every right to know if a listing will compensate him reasonably without having to jump through  
20 hoops to figure out what the compensation will be.

## 21 CONCLUSION

22 In conclusion, the Plaintiffs, The National Association of Realtors have denied any wrong  
23 doing. There was no conspiracy on behalf of the National Association of Realtors, and even if there  
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1 was a conspiracy, let's assume for a moment that there was a conspiracy, ultimately, the damaged  
2 party could not be the Seller's as the Sellers negotiated the commissions up front, however, the  
3 commissions were ultimately paid by the Buyer as demonstrated above and therefore, if there is a  
4 damaged party, the Sellers were not the damaged Party as it was the Buyer's that would have been  
5 damaged as they ultimately paid for the commissions and were never made aware of this. It's an easy  
6 fix to just have an additional disclosure to inform the Buyer of the uniqueness of the Real Estate  
7 Industry that since it's like no other industry because of the high ticket item that Real Estate is and  
8 it's also a product like no other that needs the services of 2 Agents. In this current system, the  
9 commission for both Buyer's and Seller's is built into the structure as it is financed and in this  
10 manner it makes the system consumer friendly for the Buyer to just come up with the initial down  
11 payment and this option has worked for decades. The industry just lacked one piece of information  
12 to inform the Buyer that since he is paying the commissions, it needs to be disclosed that he is paying  
13 for the commissions and this system has worked for decades.

14  
15 The Second solution is to get rid of the Buyer's Agent Compensation and Seller's can wait to  
16 see what negotiation the Buyer proposes in regards to commissions as ultimately the Buyer finances  
17 the commission cost.  
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20 **FURTHERMORE, I WOULD LIKE TO BRING IT TO THE COURT'S ATTENTION**  
21 **THE NEED FOR REPRESENTATION BASED ON ANOTHER CASE I WAS INVOLVED**  
22 **IN. ALSO, LIKE TO BRING IT TO THE DEPARTMENT OF JUSTICE'S ATTENTION**  
23 **AND THE US ATTORNEY WHAT TRANSPIRED IN MY OTHER CASE AS THERE WAS**  
24 **A COOPERATION BETWEEN THE PARTIES TO TAKE AWAY MY PROPERTY AND**  
25 **PROPERTY NOT BELONGING TO ME. THE US ATTORNEY AS OF RECENT GOT**  
26 **INVOLVED IN MY BANKRUPTCY CASE AND IN THAT CASE SINCE I HAVE THE**  
27 **PROPER LEGAL AUTHORITIES INVOLVED, I HOPE TO MAKE THE CASE THAT**  
28 **SOMETHING NEEDS TO BE DONE BY THE LEGAL AUTHORITIES INVOLVED IN**  
**BOTH OF THESE CASES (NAR CASE AND NAR MEMBER'S BANKRUPTCY CASE).**

1 As a Bankruptcy Debtor in another case, I have realized that my former Attorney, the Trustee,  
2 and the Bankruptcy Judge did indeed conspire in my case. Out of respect to the authorities involved  
3 in the case such as Judge Robert Kwan, Debtor never pushed for legal authorities to be involved in  
4 my case, legal authorities just happened to participate in both of these cases. Out of respect for Judge  
5 Kwan and the parties involved, I didn't pursued legal authorities to be involved as I didn't want to  
6 damage them. I have realized people make mistakes and I didn't want to get the parties in trouble. I  
7 have also learned by living in the neighborhood that you don't go to legal authorities as you don't  
8 want to be looked as a tattleteller. I have pursued civil remedies as that is within the law and rules of  
9 the nation. If I was in another Country like say China, from what I understand, I would have no say  
10 so based on Robert Kiyosaki's (famous author) property been taken away. He had no say so.  
11 Therefore, we must look at the law of the land to see what rights we have or don't have and respect  
12 the law and authorities.  
13

### 14 **THE IMPORTANCE OF REPRESENTATION**

15  
16 There is no perfect commission system, but the system we currently have in the United States  
17 works best as it is based on a good principle of representation. I have been involved in certain  
18 situations that demonstrated to me the importance of representation. To answer the question of which  
19 system works best, we can get the answer by looking at several cases. You see, I been part of 2 cases  
20 that help me determine which system works best. And looking at this present National Association of  
21 Realtors Lawsuit we can look to see if we can determine which system works best. I can finally  
22 articulate what system works best. Innate, we ourselves have always known what system works best,  
23 you see this lawsuit against the National Association of Realtors has been the best thing that could  
24 have happened for this Country and to the association because it will show us what as Americans we  
25 stood for at one point and that at some point we lost our ways. I have been involved in a Bankruptcy  
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1 case since 2015 and I haven't pushed the case to involve legal authorities because I was hoping we  
2 could settle the case civilly. Also, I have been very respectful of the parties as that's what I believe  
3 in. I didn't want to cause them harm to their careers. They legal authorities just happened to be  
4 involved in both the NAR (Department of Justice) and in my case as of recent (The US Attorney).  
5

6 You see, my mentor Justin Sterling, told me the following, there was a time where all you  
7 needed was a gentleman's handshake to have a deal because you understood what the person stood  
8 for. There was a time when you knew when you shook someone's hand, you understood you could  
9 make a deal with that person because you understood what he stood for. You see there was a time in  
10 America where the handshake was as good as gold. In other words, you knew when you shook  
11 someone's hand you didn't need a contract because you understood what he stood for and under what  
12 system he operated under and by what principles he was guided by. You see, some people operate by  
13 the principle of Greed whereas other people stand and operate on principles of truth, freedom, and  
14 honor. People in the past were represented by people that were guided by good principles. You see  
15 sometimes it's hard to articulate something that is so innate but we understand as Truth.  
16

17 Tu Pac said it best, once you understand the rules of the game than the game is not a trick  
18 anymore, it's a game to be played. You see not only do we need to understand the rules of the game,  
19 but we have to implement good principles in the game. Once we understand the best rules and Good  
20 principles to be guided by, we can feel assure that the person you do business with will do right by  
21 Good Principle. I have several examples to illustrate that the current commission structure that is  
22 currently operating works best. I was not the most organized person and one year financially I paid  
23 my taxes, but I didn't file my taxes. When I did file my taxes, I realized that I had overpaid my taxes  
24 by \$23,000 and I couldn't get it back because of the rule. The rule is that if someone over pays their  
25 taxes, they have 3 years to collect their taxes and since I went over those 3 years, I lost the money  
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1 because I didn't understand the rules of the game. In other words it's important to understand the rules  
2 of the game.

3 I'll give another example, because of my situation in bankruptcy one day I got a DUI and  
4 officially I wasn't arrested as the first officer that interacted with me didn't arrest me. The second  
5 officer that interacted with me said I refused an alcohol exam which I clearly didn't as there was a  
6 reading, however, the Officer never arrested me. Consequently, I missed my early Court appointment  
7 and I went to the afternoon Court. The Judge was upset and a Public Defender which the service is  
8 free made a gesture that he could help me so I relied on him. He initially said he could represent me  
9 and of course we all know that Public Defenders are free however I ended up getting arrested and  
10 spent 5 days in jail as the Public Defender didn't properly represent me. In other words, all though the  
11 representation was free, he didn't properly represent me and I lost my freedom. What's the moral of  
12 the story, we need representation that has your best interest.

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15 I'll give another example, when I lost my Father, I started drinking and I fell behind on my  
16 mortgage. I talked to an Attorney and he suggested that I file bankruptcy so I did and paid him a  
17 \$1,500 fee. I filed a Chapter 7 Bankruptcy on October 5, 2015 which is case number 2:15-bk-25283-  
18 RK. On January 15, 2016, I filed a motion to convert the case to a chapter 13, docket 27, which  
19 meant I had control of the home based on Supreme Court case Marrama v. Citizens Bank of  
20 Massachusetts, 549 US 365, which stated, "We can discern neither a theoretical nor a practical reason  
21 that Congress would have chosen to treat a first-time motion to convert a chapter 7 case to chapter 13  
22 under subsection 706(a) differently from the filing of a chapter 13 petition in the first instance."  
23

24  
25 . On January 29, 2016, exhibit 4, I told my Attorney through an email that I no longer owed  
26 the unsecured creditors and instead of telling the Court that I owed no unsecured creditors he kept  
27 quiet. Instead of the case been dismissed, it dragged on. Had I been properly represented, I would  
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1 have kept my home and not have been accused of wrongdoing and the Attorneys would have not  
2 have improperly taken money from the Corporation that I was President of. You see, I was running  
3 my business through a Corporation. The Corporation is a separate legal entity and has its separate  
4 bills and although the Trustee in the case told me not to spend money from the corporation and if I  
5 did he would offset it with the amount that I spent, he brought unjustified charges against me.  
6

7 On January 29, 2016, at 12:51 PM, I wrote to my then Attorney the following, "By the way, I  
8 am curious, when I went to the hearing the Trustee said, let's make a deal because I couldn't keep  
9 both the property and the money from the corporation. My understanding was that I had to let go of  
10 1. My goal is to keep the property, here is a curious question, how much money would the  
11 corporation have to give? **Currently I owe no creditors on my credit report**, I was able to remove  
12 one of the last items since the company that took over the account went out of business, and I  
13 disputed it and i just got a message yesterday that it was removed(see attachment). Also, I called one  
14 of the companies I owed money to (Discover) and I asked them how come I no longer see Discover  
15 on my current credit report that I got last week, and they said it was because after 7 years they can't  
16 collect. I also stopped paying everyone at the same time so assuming that's why they are no longer  
17 on my credit report.  
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20 So I think I need to figure out exactly what I owe and if I don't show up, it gives me time to  
21 figure out what I owe. Also, with this new information, please advise as to the best way to proceed.  
22 Let me know what you think is the next move and also, maybe if no creditors are on my credit report,  
23 maybe a third option is to to just work a payment plan to pay the tax liens without doing Bankruptcy,  
24 let me know what you think. I also have attached a report from Transunion." This email would end  
25 up in the record as it was allowed into evidence at the homestead trial." Based on this email, had my  
26 Attorney presented this email early on, my case would have demanded dismissal because I didn't  
27  
28

1 have any unsecured debt to get rid off (discharge). Based on this email, clearly, I didn't qualify for a  
2 Chapter 7. Consequently, although the Trustee didn't have rights to the Estate, he was able to bring a  
3 complaint for funds without right, adversary docket 19 in adversary case # 2:16-ap-01037-RK. The  
4 claims bar date was set for March 21, 2016, docket 20-1. On March 22, 2016 one date after the  
5 claims bar date, my Attorney and the Trustee's Attorney had an equity scenario conversation and it  
6 went as follows, exhibit 5 which was produced per court order on 10/24/17,  
7

8 "Brett:

9 This is a Rule 408 discussion in that we explicitly asking about settling this matter with the  
10 trustee. We would like to know what the bill is on this Estate at this point. The Proof of Claim is now  
11 passed. Outside of the secured tax lien of the IRS, there is approximately \$10,742 in unsecured  
12 claims. The IRS claim is fully secured in any equity scenario either one of us has proposed. If we  
13 assume the \$8K on hand with my firm is forfeit barring appeal, there is \$24K in the Estate. How  
14 much for the trustee's fees at this point? If, paying off the trustee, and you, and the creditors it is  
15 close to \$24K or relatively so, we are not against withdrawing the conversion and just holding out  
16 through the 7."  
17

18 Based on this equity scenario discussion, a lot can be concluded. First thing that can be  
19 concluded is that it was time to wrap up the case up as Plaintiff's Attorney wanted to "settle" the case  
20 as he stated, "...we explicitly asking about settling this matter with the trustee", in other words, the  
21 case was over with and the case demanded dismissal since there were \$16,000 or so the Estate had  
22 collected (fraudulently) and another potentially \$8,000 (fraudulently) that Appellant's Attorney was  
23 holding. Let's keep in mind that Plaintiff had control of the Estate and not the Trustee. The claims  
24 against the Estate were \$10,345.75 and by the claims getting paid from the \$16,000 or \$24,000 in  
25 total there would remain no unsecured claims against the Estate and therefore, the Chapter 7  
26  
27  
28



1 demanded dismissal. Although the Estate had collected enough funds (without right) to pay  
2 unsecured creditors, the facts of the case even under this scenario demanded dismissal of the case  
3 pursuant to 11 U.S.C. 707(b)(3)(B). My Attorney nor the Trustee did their job to have dismissed the  
4 case as no unsecured creditors were going to get paid as there was none. Debtor has proven that the  
5 case demanded dismissal because based on the facts there was no unsecured creditors to get rid of  
6 (discharge). Also, I have proven that my Attorney nor the Trustee were going to do their job to have  
7 dismissed the case. Now, I will prove that Judge Kwan also didn't do his job.

9 Judge Kwan at the motion to convert stated, to both my Attorney and the Trustee to look at a  
10 certain case to see if the case demanded dismissal. On July 22, 2016, my Attorney in regards to In Re  
11 Mitchell 357 BR 142 - Bankr. Court, CD California 2006 stated, docket 122 page 2 lines 3-6, "This  
12 court has asserted that the Mitchell ruling applies directly to the issue at hand. During trial in this  
13 matter the court provided the parties with copies of a ruling in the Mitchell matter by the  
14 HONORABLE ERNST ROBLES that was filed and entered on December 5th, 2006." This case  
15 stated, "Under § 707(b)(3) courts must ascertain whether the granting of relief to a Debtor would  
16 constitute an "abuse" of the provisions of Chapter 7. 11 U.S.C. § 707(b)(3). In making this  
17 determination, courts "shall consider ... whether the Appellant filed the petition in bad faith [or] the  
18 totality of the circumstances ... of the Debtor's financial situation demonstrates abuse." 11 U.S.C. §§  
19 707(b)(3)(A)-(B)." In Re Mitchell also stated,

22 In relevant part, § 707(b) of the Bankruptcy Code states:

23 "After notice and a hearing, the court, on its own motion or on a motion by the United States  
24 Trustee ... or any party in interest, may dismiss a case filed by an individual debtor under [Chapter 7]  
25 whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case  
26 under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the  
27  
28

1 provisions of [Chapter 7 of the Bankruptcy Code] ... In considering... whether the granting of relief  
2 would be an abuse of the provisions of [Chapter 7] in a case in which the presumption [of abuse laid  
3 out in § 707(b)(2)(A)(I)] does not arise or is rebutted,[10] the court shall consider — (A) whether the  
4 debtor filed the petition in bad faith; or (B) the totality of the circumstances (including whether the  
5 debtor seeks to reject a personal services contract and the financial need for such rejection as sought  
6 by the debtor) of the debtor's financial situation demonstrates abuse." In other words, Judge Kwan  
7 understood the facts of the case and that it demanded dismissal by having provided case law on point  
8 as there would be no unsecured creditors to discharge based on the fact that the Estate had collected  
9 \$24k and the unsecured debts were about \$10k. Based on these facts, Judge Kwan understood the  
10 facts of the case and by not having dismissed the case, he committed a "Fraud upon the Court" just  
11 like in the Cf. Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1133 (9th Cir.1995) (non-  
12 disclosure of existence of videotape containing unfavorable results amounted to fraud on the court,  
13 thereby justifying new trial). In Cf. Pumphrey v. K. W. Thompson Tool Co., 62 F .3d 1128, 1133  
14 (9th Cir. 1995), the evidence (second video) was suppressed as it never was introduced into trial, in  
15 other words the evidence was suppressed by not having been introduced to the Court. In this case the  
16 evidence that was necessary to conclude the case properly was introduced to the Court however, just  
17 like in Cf Pumphrey the evidence was suppressed causing a "Fraud upon the Court". Consequently,  
18 although the case demanded dismissal, Judge Kwan ruled that I couldn't qualify for a Chapter 13 and  
19 the motion was denied on July 19, 2016, docket 129.

#### 20 21 22 23 24 **MOTION TO SALE MY PROPERTY TOOK PLACE ON JULY 19, 2016**

25 I have proven that based on the facts of the case, my case demanded dismissal and the facts  
26 again were suppressed and my home was ordered to be sold, docket 135. Here again, there was a  
27 "Fraud upon the Court" just like the case Cf. Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128,  
28

1 1133 (9th Cir.1995) (non-disclosure of existence of videotape containing unfavorable results  
2 amounted to fraud on the court, thereby justifying new trial). In Cf. Pumphrey v. K. W. Thompson  
3 Tool Co., 62 F .3d 1128, 1133 (9th Cir. 1995), the evidence (second video) was suppressed as it  
4 never was introduced into trial, in other words the evidence was suppressed by not having been  
5 introduced to the Court.  
6

7 **ON AUGUST 17, 2016 HOMESTEAD TRIAL TOOK PLACE ALTHOUGH I DIDN'T**  
8 **QUALIFY OR HAVE A NEED FOR A HOMESTEAD.**

9 On May 9, 2016 my Attorney amended the schedules to claim a homestead exemption, docket  
10 84. This clearly was incorrect as my case demanded dismissal. The Trustee and Judge Kwan saw the  
11 January 29, 2016 email as it was introduced in Court. Judge Kwan used it in his memorandum  
12 decision, as he stated, docket 364 page 32 lines 3-19, "Debtor stated to his attorney  
13 through email communications on January 29, 2016 after the initial meeting of creditors,  
14 "By the way, I am curious, when I went to the hearing the Trustee said, let's make a deal  
15 because I couldn't keep both the home and the money from the corporation. My  
16 understanding was that I had to let go of 1." *Email Communications attached to Debtor's*  
17 *Trial Exhibit A, Debtor's Trial Sub-Exhibit A.* Considering the circumstances in this case,  
18 the court determines that Debtor was talking about his choice of exemptions as to the  
19 Hawaiian Avenue real property and the personal property sales commissions that he had  
20 claimed as exempt the day before the meeting of creditors on December 15, 2015. This  
21 statement shows that Debtor was aware that Debtor had to make a choice between  
22 exempting the personal property sales commissions or the Hawaiian Avenue real  
23 property, thus corroborating Trustee's testimony recounting that Trustee had informed  
24 Debtor of this choice of exemptions at the December 15, 2015 meeting of creditors.  
25 Thus, Debtor was aware of the materiality of the representations that he made by electing  
26  
27  
28

1 personal property exemptions pursuant to the bankruptcy-like set of exemptions of C.C.P.

2 § 703.140 and electing not to claim a homestead exemption under the regular nonbankruptcy set of  
3 exemptions of C.C.P. § 704.”

4 In other words, Judge Kwan suppressed the rest of the evidence in exhibit 4, as the whole  
5 email stated the following,

6  
7 “By the way, I am curious, when I went to the hearing the Trustee said, let's make a deal  
8 because I couldn't keep both the property and the money from the corporation. My understanding was  
9 that I had to let go of 1. My goal is to keep the property, here is a curious question, how much money  
10 would the corporation have to give? **Currently I owe no creditors on my credit report**, I was able  
11 to remove one of the last items since the company that took over the account went out of business,  
12 and I disputed it and i just got a message yesterday that it was removed(see attachment). Also, I  
13 called one of the companies I owed money to (Discover) and I asked them how come I no longer see  
14 Discover on my current credit report that I got last week, and they said it was because after 7 years  
15 they can't collect. I also stopped paying everyone at the same time so assuming that's why they are no  
16 longer on my credit report.  
17

18  
19 So I think I need to figure out exactly what I owe and if I don't show up, it gives me time to  
20 figure out what I owe. Also, with this new information, please advise as to the best way to proceed.  
21 Let me know what you think is the next move and also, maybe if no creditors are on my credit report,  
22 maybe a third option is to to just work a payment plan to pay the tax liens without doing Bankruptcy,  
23 let me know what you think. I also have attached a report from Transunion.”

24  
25 Based on the entire email, I demonstrated that I didn't qualify for a homestead exemption as I  
26 had no unsecured creditors to get rid off based on the credit report which a copy can be found in the  
27 June 3, 2016 filing which was part of the Motion to Convert brief docket 94 pages 59-69 and docket  
28

1 157-1 pages 17-27 filed on November 4, 2016 as part of the Homestead Exemption Brief. Clearly, I  
2 have demonstrated that my Attorney, Trustee, and Jude Kwan conspired against me. Since we are in  
3 the arena of talking about conspiracies, Clearly I have proven that my Attorney, the Trustee, and  
4 Judge Robert Kwan conspired against my Estate. I have also proven since there is a lot of confusion  
5 in the Real Estate Industry about commissions, that there was no conspiracy, but even if there was, it  
6 would have been the Buyer's that suffered the damages as they are the ones that ultimately pay for  
7 the commissions.  
8

9 Furthermore, there are other cases where the parties conspired against Debtors in the  
10 Bankruptcy Courts and therefore, respectfully as DOJ and the US Attorney are fields of authority and  
11 respect, I urge you to look into these matters to determine if the proper outcomes were just.  
12

13 My Attorney as presented here via the evidence never properly represented me and I didn't  
14 understand what happened and he did things illegally and intentionally improper and the Corporation  
15 lost money and I lost my home although I didn't owe no unsecured creditors, in other words, I lost my  
16 home with no benefit to me as I should have kept the home and the Judge understood this as he  
17 provided proper law. I lost my home and the Corporation lost money and this was only possible  
18 because I was not represented properly even though I paid my Attorney. You see, when you don't  
19 know the rules of the game and how the game works, you can get easily tricked and lose. So what's  
20 the moral of the story? You need to know the rules of the game and have representation that has your  
21 best interest.  
22

23 So I have come to the understanding it appears that the best system is based on answering 2  
24 questions. The questions are, what am I worth? or what is it worth? To get to the best system, we  
25 must answer the questions as truthfully as we can. Based on my experience, I been litigating my case  
26 since November of 2016 until now by myself trying to figure out how to get the proper legal  
27  
28

1 outcome. Nobody taught me this game, but it seems to me that the Truth is that since we are always  
2 going to be living in a Society where we consume goods and services, it's about what the good or the  
3 service represents. You see, we have to determine what the product or service represents and that's  
4 what Consumers understand.

5  
6 Based on my experience it seems that the best system is one where you have representation by  
7 an individual who is an expert and has your best interest. How do you get such a person? It's when  
8 you have representation that's in your best interest. To demonstrate the importance of representation  
9 let me give you several legal examples. After litigating in the Bankruptcy Court for 7 and a half years  
10 I been able to figure out the rules of the game when it comes to representation. In litigating in the  
11 Bankruptcy Court, I noticed that certain cases were not properly legally handled correctly and were  
12 not properly concluded as it seems that the parties conspired (worked together) against the Debtors in  
13 Bankruptcy. The question is why weren't those cases decided legally properly? Guess what? The  
14 answer is no proper representation. In the case of In re Lua, 529 B.R. 766, 772 (Bankr. C.D. Cal.  
15 2015), the Husband owned the property free and clear meaning he didn't owe any money. He also  
16 owned the property as his sole and separate property meaning he owned the property by himself  
17 exhibit 6. Banks do this to make sure that any debt the spouse owes, the husband is not responsible  
18 for the debt. In other words, the wife disclaimed that she had no interest in the home. Furthermore,  
19 this case is like Bell-Kilbourn v. Bell-Kilbourn, 169 P. 3d 111 - Ariz: Court of Appeals, 1st Div.,  
20 Dept. B 2007, although Mrs. Bender never had an interest in the trailer park to convey in light of her  
21 disclaimer at the time of acquisition. Id. at 94, 597 P.2d at 997. In other words, Ms. Lua didn't have  
22 an interest to convey, in other words the property could not be brought into bankruptcy because it  
23 was her husband's property and the disclaimer even read that it was husband's sole and separate  
24 property and the Trustee was aware of this as he stated docket 61 case # 2:11-bk-41173-RK,  
25  
26  
27  
28

1 paragraph 9. "On April 19, 1999, Husband and Debtor contemporaneously executed a gift deed  
2 transferring any and all of her interest in the Property to Husband **as sole and separate property,**  
3 **thereby purportedly transferring any interest Debtor and Husband held in the Property to**  
4 **Husband as his sole and separate property."**

5  
6 When Ms. Lua filed bankruptcy, the Trustee (Court Attorney) brought the Husband's home  
7 into the Bankruptcy Court as the Husband never got served the paperwork that demonstrated that the  
8 Husband needed to show up in Court and they brought the home into the Bankruptcy Court and the  
9 Husband lost the home. The wife's unsecured credit card bill was \$8000 and change. I spoke to the  
10 Husband and he told me that he was never given any opportunity to pay the bill and he said that had  
11 he been given the opportunity, he would have gladly have payed it and he would have kept the home.  
12 So is it important for representation? The clear answer is yes! What else is important? It's important  
13 that the representation has your best interest. Representation is the starting point. Clearly, the Trustee  
14 in this case and the Husband's Attorney (he eventually got one) didn't do their jobs as they didn't  
15 properly represent the case.  
16

17 Let me tell you another case, Jesus Bencomo case # 2:14-ap-01519-BR. In that case the  
18 Trustee (the court Attorney) revoked his discharge, docket 51 in adversary case #: 2:13-ap-01451-  
19 BR. In another words, Mr. Bencomo was not going to benefit from the Sale of his home as no  
20 unsecured creditors were going to be payed, what should have happened is that he should have kept  
21 his home and his debt, but instead he lost his home and he still kept his debt and why? Because he  
22 didn't have proper representation. Bencomo's home was put on the market to be sold docket 72 and  
23 it was sold. In other words if there is not going to be a benefit to unsecured creditors, the property  
24 should not be sold as the purpose of the Bankruptcy Act will not be fulfilled. To illustrate this point,  
25 the Debtor In Re Kestell, 99 F. 3d 146 - Court of Appeals, 4th Circuit 1996 was denied a discharge in  
26  
27  
28

1 Bankruptcy. The Bankruptcy court In Re Kestell found that Kestell had failed to list assets that were  
2 property of the Estate and that such failure constituted a fraudulent concealment under 11 U.S.C. §  
3 727. The court stated, “We need not decide whether the assets at issue were property of the Estate  
4 because the Bankruptcy court's findings amply support the conclusion that Kestell attempted to abuse  
5 the Bankruptcy process so as to ensure that his former wife, appellee Janet Atkinson, could not  
6 collect a debt Kestell owed her. See 11 U.S.C. §§ 105, 707.” In other words, Bencomo’s property  
7 should not have been sold. The Trustee in this case was the same Trustee as in my case, Wesley H.  
8 Avery.  
9

10 Let me tell you of another case, In re Machevsky, 637 BR 510 at 544, a third party in that case  
11 who let Machevsky borrow money in order to avoid foreclosure should have profited from the sale of  
12 the home instead, the Trustee profited (Attorney for the Court). What happened? The Attorney  
13 representing Data Leverage submitted a claim against the Estate as an administrative claim (at the  
14 end of the case) instead of an actual claim in the beginning of the case. In other words, had the  
15 Attorney for Data Leverage had their best interest, this party would have gotten payed as there would  
16 be no funds remaining to pay anyone else, but instead, the home remained in Bankruptcy and the  
17 funds that were available were payed to the Trustee for his services and Data Leverage received  
18 nothing. So the Trustee got payed and Data Leverage and why? Because Data Leverage didn't have  
19 representation that had their best interest.  
20  
21

22 Let me tell you of another case, In re Guevarra, 638 BR 120 - Bankr. Appellate Panel, 9th  
23 Circuit 2022, the Debtor in that case co-signed for his Nephew's home, Guevara didn't make  
24 payments on the home nor live at the home. Based on the Law, Guevara was holding title in Trust  
25 meaning for another and therefore the Nephew's share should not have been sold. So why did this  
26 happen? Because Guevara didn't have representation that had his best interest. So what's the moral of  
27  
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1 the story? The moral of the story is that a good system is one that allows for representation, but not  
2 just any representation, but representation that has your best interest and the founding Father's  
3 understood this as part of the Constitution when you are accused of a crime you have the right to  
4 representation and appointed by the Government, but guess what the question is, does that  
5 representation have your best interest? The most important thing about a Just system is the right to  
6 Justice and representation and that's the rights allowed by the United States Constitution and those  
7 are the rights that we must play by as we must respect the laws and rules of a Nation. If I was to  
8 travel to China, I must respect the laws and the rules of the Nation as every Nation has their unique  
9 laws and rules. Every System is different, the rules are set by those in charge of setting them. In any  
10 System, we must understand the rules and live life through those rules. In America, having proper  
11 representation in a transaction is important. And the question is... what's that worth? It's valueless. In  
12 the current Real Estate Commission System, the system has built-in representation as the Buyer  
13 ultimately pays for both the Seller and the Buyer's Agent's commissions. See this National  
14 Association of Realtors case forced us to analyze as to why things are the way they have been and  
15 allowed us to articulate the truth of the matter. The moral of the story, if you live by good principle,  
16 money is never the main thing, as it's a by-product of living by principle. Also, in the Real Estate  
17 industry no one ever articulated to us why the system works and that the Buyer is the one that pays  
18 the commissions are demonstrated above. Furthermore, the NAR settlement proposal has several  
19 issues. The first issue is that as mentioned above, the Buyer pays for the commissions. Second issue  
20 is that the Seller will not have the ability to do what HUD and the Banks have done which is to  
21 provide more in commissions as an incentive to Buyer's Agent to have the home sold faster as the  
22 compensation will not be provided in the Computer service. Third issue is that, Seller cannot  
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